

after which the applicant may file an application for employment authorization in accordance with § 208.7(a)(1). If an application has not been mailed to the applicant within 30 days, it shall be deemed complete; and

(6) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act, 8 U.S.C. 1324c.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

#### § 208.4 Filing the application.

If no prior application for asylum or withholding of deportation has been filed, an applicant shall file any initial application according to the following procedures:

(a) *With the Service Center by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port of entry through which the alien seeks admission to the United States. The addresses of the Service Centers shall be made available through the local INS Information Unit. Upon receipt of the application, except in the case of an alien who has been convicted of an aggravated felony, the Service Center shall forward a copy of the application to the Department of State.

(b) *With the District Director.* In the cases of:

(1) Stowaways who are presented to the Service,

(2) Crewmen who affirmatively approach a Service officer in order to file for asylum, and

(3) Other aliens seeking admission at a seaport or airport of entry, applications for asylum or withholding of deportation shall be accepted by the District Director having jurisdiction over the port of entry.

The District Director shall immediately forward the application to the

asylum office with jurisdiction over that port of entry.

(c) *With the Immigration Judge.* Initial applications for asylum or withholding of deportation are to be filed with the Immigration Court in the following circumstances (and shall be treated as provided in part 236 or 242 of this chapter):

(1) *During exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien pursuant to part 236 or 242 of this chapter, an initial application for asylum or withholding of deportation from that alien shall be filed thereafter with the Immigration Court.

(2) *After completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been completed, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to reopen pursuant to 8 CFR 3.8, 3.22 and 242.22 where applicable.

(3) *Pursuant to appeal to the Board of Immigration Appeals.* If jurisdiction over the proceedings is vested in the Board of Immigration Appeals under part 3 of this chapter, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to remand or reopen pursuant to 8 CFR 3.2 and 3.8 where applicable.

(4) Any motion to reopen or remand accompanied by an initial application for asylum filed under paragraph (b) of this section must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

#### § 208.5 Special duties toward aliens in custody of the Service.

(a) When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms

for asylum and withholding of deportation and shall provide the applicant with a list, if available, of persons or private agencies that can assist in preparation of the application.

(b) Where possible, expedited consideration shall be given to applications of aliens detained under 8 CFR part 235 or 242. Except as provided in paragraph (c) of this section, such alien shall not be deported or excluded before a decision is rendered on his initial asylum or withholding of deportation application.

(c) A motion to reopen or an order to remand accompanied by an application for asylum or withholding of deportation pursuant to § 208.4(b) shall not stay execution of a final order of exclusion or deportation unless such a stay is specifically granted by the Board or the Immigration Judge having jurisdiction over the motion.

#### **§ 208.6 Disclosure to third parties.**

(a) An application for asylum or withholding of deportation shall not be disclosed, except as permitted by this section, or at the discretion of the Attorney General, without the written consent of the applicant. Names and other identifying details shall be deleted from copies of asylum or withholding of deportation decisions maintained in public reading rooms under § 103.9 of this chapter.

(b) The confidentiality of other records kept by the Service (including G-325A forms) that indicate that a specific alien has applied for asylum or withholding of deportation shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained when they are transmitted to State Department offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) Adjudication of asylum or withholding of deportation applications;

(ii) The defense of any legal action arising from the adjudication of or fail-

ure to adjudicate the asylum or withholding of deportation application;

(iii) The defense of any legal action of which the asylum or withholding of deportation application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application; or

(ii) Arising from the proceedings of which the asylum or withholding of deportation application is a part.

#### **§ 208.7 Employment authorization.**

(a)(1) An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with §§ 208.3 and 208.4 of this part has been received. If an application for asylum has been returned as incomplete in accordance with § 208.3(c)(5), the 150-day period will commence upon receipt by the INS of a complete application for asylum. An applicant whose application for asylum has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. After the expiration of the 150-day period, the INS shall have 30 days from the date of filing of an initial application for employment authorization to grant or deny that application. If the INS fails to adjudicate the employment application within that period, the alien shall be eligible for interim employment authorization under this chapter. If an application for asylum is denied by an immigration judge or an asylum officer within the 30-day period, but prior to a decision on the application for employment authorization, the application for employment authorization shall be denied.